

It is believed that no fee is required for the consideration of this Amendment by the Office. If, however, a fee is due, the Assistant Commissioner is authorized to charge such fee to Deposit Account 50-0320.

This Amendment cancels claims 10 to 13, without prejudice or the intention of creating estoppel, and adds claim 14 to 17. Claims 14 to 16 find support in former claim 10 to 13. Claims 10 to 13 were rewritten as claim 14 to 16 in order to place them in compliance with conventional U.S. practice. As the scope of the originally claimed subject matter is not affected, the application of the doctrine of equivalents to is not affected.

Claim 4 to 8 and 13 were objected to under 37 C.F.R. 1.75(c). In view of the amendments to the claims, it is argued that this objection is moot and should be withdrawn. Again, as the changes made to the claims did not affect their scope, the application of the doctrine of equivalents is not affected.

Claim 9 stands rejected under 35 U.S.C. § 112, second paragraph for reciting a trademark. Claim 9 has been amended to recite the generic description of the product, which is found on page 6 of the specification. Thus, no new matter is added.

Claims 10 to 12 stand rejected under 35 U.S.C. § 101 for being non-statutory. In view of the replacement of these claims with new claims 14 to 16, it is urged that this rejection is moot and should be withdrawn.

Claims 1 to 13 stand rejected under 35 U.S.C. § 103(a) for allegedly being unpatentable over Masayuki et al, EP 204146 (“Masayuki”), and Langley et al, JP 58113101 (“Langley”). Applicants urge that as neither of these prior publications taken alone or in any fair combination suggests that one may use a post-emergent herbicide in a pre-emergent manner by formulating the post-emergent herbicide with specific types of carriers, the rejection does not

establish a *prima facie* case of obviousness. Accordingly reconsideration and withdrawal of this rejection are requested.

This invention provides for pre-emergence herbicidal compositions, which comprise at least one post-emergence herbicide and a carrier selected from the group consisting of fuller's earth, aerogels, high molecular weight herbicides and polymers based upon acrylic acids, methacrylic acid and copolymers thereof, as well as to a method of using a post-emergence herbicide in a pre-emergence manner. As neither of the prior publications discloses a pre-emergence herbicidal composition containing a post-emergence herbicide or a method of using a post-emergence herbicide pre-emergently, the rejection does not establish a *prima facie* case of obviousness.

The rejection states that "Masayuki teaches a herbicidal composition comprising glyphosate, glufosinate, and ammonium sulfate" but does not "teach or suggest the composition comprising polyglycol." Office Action at 2 and 3. In order to correct this deficiency, the rejection relies upon Langley, which said to teach a herbicidal composition comprising polyglycols and glyphosate. Office Action at 3. From these disclosures the rejection concludes that it "would have been obvious to one having ordinary skill in the art to combine the prior art teachings to arrive at the instant composition comprising polyglycol, glyphosate, glufosinate, and ammonium sulfate" since the prior publications "individually teach herbicidal compositions."

Id. Applicants respectfully disagree because neither Masayuki nor Langley suggests a composition comprising a post-emergent herbicide (such as glyphosate, glufosinate, bialaphos or paraquat), polyglycol and ammonium sulfate for use as a pre-emergent herbicide.

Masayuki teaches a herbicidal composition comprising as the active ingredients:

- a) 2-(4-chloro-fluro-5-propagylloxophenyl-5,6,7,8-tetrahydro-1H-1,2,4-triazolo-(1,2-a)-pyridazine-1,3-2H-dione, and
- b) at least one compound selected from the group consisting of glyphosate, glufosinate, bialaphos and paraquat

(see, claim 1). The herbicidal compositions described therein further comprise an inert carrier of diluent. *Id.* The patent provides ammonium sulfate as a example of an inert carrier (p.6, 1. 5 to 8).

Masayuki discloses that compositions comprising component a) and b) exhibit enhanced herbicidal activity in comparison to the sole use of each of said active ingredients (see p.2, last paragraph). Moreover, these compositions are used under post-emergent conditions (p. 10, test example 1), since compound a) and compounds b) act as post-emergent herbicides (see Pesticide Manual, 12th edition). Hence, Masayuki is completely silent with respect to a method formulating the composition described therein for use as a pre-emergent herbicide.

Langley does not correct their deficiency. Langley teaches a herbicidal composition comprising a herbicide (*inter alia* glyphosate) and certain polyglycols. This herbicidal composition is also used under post-emergence conditions (see example 1 of the specification) and, therefore, does not suggest a pre-emergent application or carriers that will permit one to administer a post-emergent herbicide pre-emergently. Moreover, Langley does not provide any motivation to omit the first herbicide in the compositions taught by Masayuki.

Thus, in view of the foregoing, it is urged that Masayuki and Langley taken in any fair combination do not suggest the invention compositions or methods and the withdrawal of this rejection is requested.

PATENT
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Favorable action is earnestly solicited.

Respectfully submitted,

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Appendix Showing Amendments to the Claims

4. (Amended) The herbicidal composition as claimed in [any of claims] claim 1 [to 3], wherein the herbicide is selected from the group consisting of bilanafos, diquat, glufosinate-ammonium, glyphosate and paraquat.

5. (Amended) The herbicidal composition as claimed in [any of claims] claim 1 [to 4], wherein the herbicide is glufosinate-ammonium.

6. (Amended) The [process] herbicidal composition as claimed in [any of claims] claim 1 [to 5], wherein the carrier materials are selected from the group consisting of aerogels, high-molecular-weight polyglycols and polymers based on acrylic acid, methacrylic acid and copolymers thereof.

7. (Amended) The herbicidal composition as claimed in [any of claims] claim 1 [to 6], which additionally comprises at least one substance selected from the group consisting of pre-emergence herbicides, plant growth regulators, fungicides, insecticides, safeners, nutrients, seed dressings and fertilizers.

8. (Amended) The herbicidal composition as claimed in [any of claims] claim 1 [to 7], which additionally comprises at least one additive selected from the group consisting of surfactants, wetting agents, emulsifiers, adjuvants, ammonium salts, preservatives, colorants, antifoams, tackifiers, solvents, buffer systems and UV stablizers.

9. (Amended) The herbicidal composition as claimed in claim 8, wherein the additive is selected from the group consisting of alkyl ether sulfonates[Genapol LRO®], ammonium sulfate and ammonium nitrate.